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## **Legal Memorandum**

To: Tennessee Law Enforcement Officers

From: TLETA Legal Staff

Date: 06/28/2021

RE: HB 786-T.C.A. § 39-17-1307 (g) Permit Less Carry Bill

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This legal memorandum is to assist officers and agencies in understanding the new “permit less” carry bill (House Bill 786) cataloged at T.C.A. § 39-17-1307(g), going into effect on July 1, 2021.

There are now several ways in which an average citizen may legally carry a handgun in Tennessee. 1) T.C.A. § 39-17-1351-Enhanced Handgun Carry Permit, 2) T.C.A. § 39-17-1366-Concealed Handgun Carry Permit, 3) T.C.A. § 39-17-1307(e) Unlawful carrying and possession of a weapon which creates an exception and allows a citizen, not otherwise prohibited, to carry their handgun in a boat or car, 4) T.C.A. § 39-17-1308-Defenses to unlawful possession or carrying of a weapon which creates a legal defense to the offense in 1307 and allows persons to have a firearm at their residence, business, or premises, and now 5) the “permit less” carry provision at T.C.A. § 39-17-1307(g). The first two legal mechanisms are the handgun permit carry statutes, 1351 and 1366 which require training and a background check. The other means are a defense and an extension of the Castle Doctrine; however, the new “permit less” provision is considered an extension of the 2<sup>nd</sup> Amendment.

The permit statutes, 1351 and 1366, allow permit holders to legally carry in more areas than the new “permit less” carry provision. The permit statutes still require the permit holder to have their permit in their possession when carrying a handgun in a location or in a manner where it would be prohibited under the “permit less” carry provision; further, permit holders are still required to present their permit to a law enforcement officer upon demand, if the officer is brought into legal contact with the person; more specifically, they have reasonable suspicion to believe the person has or is committing an offense, reasonable suspicion to believe the person is not to be in

possession of a weapon, or some other legal means of contact within the officers authority.

With the new law, the legislature, in creating the “permit less” carry law, made a modification to T.C.A. § 39-17-1307-Unlawful carrying or possession of a weapon by adding subsection (g) to the original statute. The original statute, T.C.A. § 39-17-1307 (a) (1) informs us . . . a person commits an offense who carries, with the intent to go armed, a firearm or a club.

***Subsection (g) provides “It is an exception to the application of subsection (a) that a person is carrying, whether open or concealed, a handgun and:***

***(1) The person meets the qualifications for the issuance of an enhanced handgun permit under T.C.A. § 39-17-1351 (b) and (c). For purposes of this subdivision (g) (1), “qualifications” does not include completion of an application under § 39-17-1351 (b) and (c).***

***(2) The person lawfully possesses the handgun; and,***

***(3) The person is in a place where the person has a right to be.”***

This is very similar how the legislature made it legal for a citizen, not otherwise prohibited, to carry their firearm in their vehicle or boat; by tacking on an exception to the rule.

Let’s examine the components of subsection (g) or the “permit less” carry section to know how to appropriately handle future citizens interactions.

To put it in layman’s terms: any person, may carry a handgun, open or concealed, in Tennessee without a permit as long as they are in a place they have a legal right to be, they legally possess the handgun (not stolen or otherwise prohibited), and they meet the requirements to get a handgun carry permit, if they had chosen to get one. This means: the person must be 21 years of age or 18 years of age and possess their paperwork as an honorably discharged or retired veteran of the United States armed forces and not be prohibited under the two permit statutes, T.C.A. § 39-17-1351 and 39-17-1366 or federal law. This means a person cannot obtain a permit if they have a prohibition under T.C.A. § 39-17-1307 (b) (1) and (f) (1), 18 U.S.C. 922 (g) or any other state or federal law. The combined prohibitions to firearm possession under these statutes are:

- 1) A conviction for a felony crime,
- 2) A conviction for a felony crime of violence,
- 3) A conviction for an attempted felony crime of violence,
- 4) A conviction for a felony involving the use of a deadly weapon,
- 5) A conviction for a felony drug conviction,
- 6) A conviction for domestic violence,
- 7) Is currently under a court’s jurisdiction to prevent harassing, stalking, or threatening an intimate partner,
- 8) Is a fugitive from justice,
- 9) Has renounced their U.S. Citizenship,
- 10) Received a dishonorable discharge from the Armed Services,
- 11) Is unlawfully in the United States,

- 12) Has been adjudicated mentally defective or been committed to a mental institution within the past 7 years,
- 13) Is an unlawful user or addicted to any controlled substance; or,
  - a) is an unlawful user of or addicted to any controlled substance or alcohol and,
  - b) a patient in rehabilitation for substance abuse (alcohol or drugs) by court order; or,
  - c) a voluntary patient in rehabilitation for substance abuse (alcohol or drugs).
- 14) Is receiving social security disability benefits by reason of alcohol or drug dependency or mental disability,
- 15) Has two or more convictions for DUI, in this state or any other state, in the past 10 years and none of those convictions have been in the past 5 years,
- 16) Subject to any other state or federal law that prohibits them from possessing a firearm; or,
- 17) Has a conviction for stalking.

If a person has one of these prohibitions, they may not carry a handgun/firearm in Tennessee nor be granted a carry permit.

**Note:** There is no requirement the person be a Tennessee resident to carry under 1307 (g) and there is no requirement the handgun be carried in the open; it may be concealed.

We have talked about the broad scope of the statute; so, where is a person under “permit less” carry not permitted to carry their handgun?

The new provision (g) will undoubtedly cause some confusion among citizens in the belief they may carry wherever and whenever they desire. This is not the case. The new provision does not affect T.C.A. § 39-17-1311-Carrying weapons on public parks, playgrounds, civic centers, and other recreational buildings and grounds. The new statute does not allow a person to carry their handgun in these areas. A person must have the Enhanced handgun carry permit under T.C.A. § 39-17-1351 or Concealed Handgun Carry Permit under T.C.A. § 39-17-1366 to carry in a park, playground, civic center, greenway, historic park, natural area, waterway, nature trail, or other public recreational building/area with the exception of when one of the aforementioned areas is being used for a school function.

As with all legal methods of carrying a handgun in Tennessee, no person is permitted to carry a firearm: on/in school grounds or at school functions unless they are dropping off or picking up passengers and the weapon is left in the vehicle, nor while the person is consuming alcohol, if their employer has banned firearms in the workplace, at judicial proceedings, or any person, place, or business posting the required signage under T.C.A. § 39-17-1359-Prohibition at certain meetings-Posted notice-Handgun carry permit holder that prohibits firearms on the premises all together or restricts them to only those possessing a handgun permit.

The new “permit less” carry provision also modifies several other statutes to varying degrees:

- 1) Persons carrying under “permit less” carry may now legally transport or store their weapons and ammunition in their vehicles as provided in T.C.A. § 39-17-1313-Transporting and storing a firearm or firearm ammunition in a permit holder’s vehicle- like previous permit holders have.
- 2) T.C.A. § 39-14-105-Grading of theft offenses- is modified by:
  - a) it makes the theft of any firearm valued at \$0-\$2500 an E Felony. Once a firearm’s value reaches \$2501 or more, the theft grading scale is used to determine the level of the felony.
  - b) requires a defendant to serve a minimum of 180 days in confinement upon conviction of theft of a firearm.
  - c) T.C.A. § 40-35-114-Enhancement factors-is modified to make the theft of a firearm from a motor vehicle an aggravating factor in a sentencing hearing.
  - d) T.C.A. § 40-35-501-Release eligibility status-Calculations- adds a new section that requires a defendant to serve 85% of their sentence before release eligibility when convicted for felon (violence or drug) in possession of a firearm or unlawfully providing a firearm to a juvenile.

All other statutes, not mentioned, related to firearms possession and carry remain as they were in the T.C.A. § 39-17-1301 *et. seq.* prior to passage of the new provision.

Most officers are probably asking the question, “How I am going to know if a person is otherwise prohibited or does not qualify for a handgun permit so as to make carrying the firearm illegal?” Answer: You won’t unless you run their history or otherwise have knowledge, they are not to possess the handgun. As law enforcement officers we need to be cautious to this end. We must have reasonable suspicion to stop someone and then reasonable suspicion to frisk. Reasonable suspicion is based on specific and articulable facts, coupled with rational inferences that would lead a person to believe something is so. Whether our actions are justified will all come down to the articulation as to our legal justification for the stop and/or frisk. With the adoption of the permit less carry provision we have to be mindful; it is not a crime to carry, open, or concealed, a handgun in Tennessee; therefore, no reasonable suspicion can exist that a crime is occurring to stop unless you can articulate the potential prohibition to carrying the handgun, the weapon is part to a crime, or there is some other non-related reason to make a stop. Remember facts are key!!!

The one thing the new provision does not mention is taking custody of the weapon during a citizen interaction as permitted in T.C.A. § 39-17-1351(t)-Enhanced handgun carry permit and T.C.A. § 39-17-1366(m)-Concealed handgun carry permit. This is where reasonableness and articulation, coupled with diplomacy, will control the situation. Varying levels of firearm experience among citizens could create a situation where safe handling or brief retention of a weapon by officers during a citizen interaction could be a reasonable course of action. Naturally, we have no right to permanently seize

a weapon, outside unlawful activity and due process, but should reasonableness require, officers should be permitted to create a safe working environment by taking temporary custody of a weapon during the course of the citizen interaction if it can be articulated and considered reasonable under the circumstances. Do remember however, a lot of times the best way to deal with a loaded firearm in someone else's possession is to leave it where it is, instruct them to not touch it, and avoid any unnecessary handling.

In closing, law enforcement officers should be prepared to exercise patience. The prediction can be made citizens are going to assume carrying a handgun in Tennessee is wide open, without limit, and they may carry as they wish. This is not true as previously shown. Recent media coverage has not done justice to explaining the parameters of the new provision either. We should exercise discretion when dealing with otherwise law-abiding citizenry and educate them about the limitations on "permit less" carry rather than resorting to detention, citation, or arrest as an immediate first step. Educate them, and if they seek to expand the areas in which they wish to possess their weapon, encourage them to pursue one of the handgun permits with the requisite training.

Stay safe.

Scott Wilder, TLETA Instructor.